

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of J.C.W., Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

CYNTHIA KOVACIK,

Respondent-Appellant.

UNPUBLISHED

March 20, 2007

No. 272713

Oakland Circuit Court

Family Division

LC No. 02-662666-NA

Before: Cooper, P.J., and Cavanagh and Meter, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating her parental rights to her minor child under MCL 712A.19b(3)(g), (j), (l), and (m). We affirm.

Respondent first challenges the lower court's finding of jurisdiction over the minor child under MCL 712A.2(b)(1). Respondent argues that the maternal grandmother was available and respondent's temporary emergency could have been handled without a petition. However, respondent did not place her child in the grandmother's care and custody, as permitted under MCL 712A.2(b)(1)(B), and the grandmother was unwilling to provide care indefinitely while respondent stabilized. No authority required protective services to handle this situation without a petition. Respondent also claims without evidence that the county prosecutor bullied the caseworker and the petition was filed without a proper investigation. It was not necessary for the caseworker to sign the petition. Respondent acknowledges that the prosecutor can file a petition. See *In re Hill*, 206 Mich App 689, 691-692; 522 NW2d 914 (1994); see, also, *In re Jagers*, 224 Mich App 359, 362; 568 NW2d 837 (1997). The lower court did not err when it found jurisdiction over the minor child.

Respondent also challenges the lower court's finding of statutory grounds for termination. A petitioner must establish at least one statutory ground for termination of parental rights by clear and convincing evidence. *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003). In the present case, the prosecutor offered clear and convincing evidence that respondent did not provide proper care and custody and was not reasonably likely to within a reasonable time under MCL 712A.19b(3)(g). Respondent completed a treatment plan and regained custody in the past; however, she could not maintain her progress. She had two significant periods of noncompliance

with medication and resulting mental instability during the three years after she completed the plan. During those times, she suffered delusions and paranoia and was hospitalized multiple times. Expert testimony was not required to show she was likely to repeat this pattern. The child needed continuous proper care and custody. The lower court did not err when it found a statutory ground to terminate respondent's parental rights under MCL 712A.19b(3)(g).

Respondent's mental instability also created a reasonable likelihood the child would be harmed if returned. See MCL 712A.19b(3)(j). It was not necessary to prove past physical harm. Respondent's behavior when the nurse visited her home demonstrated the risks the child faced in her care. Therefore, the lower court did not err when it found a statutory ground to terminate respondent's parental rights under MCL 712A.19b(3)(j). Finally, the court did not err when it found statutory grounds under MCL 712A.19b(3)(l) and (m) because the lower court took judicial notice of the voluntary termination of respondent's parental rights to an older child.

Whenever a lower court finds a statutory ground for termination, it must terminate parental rights unless termination was clearly against the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 352-353; 612 NW2d 407 (2000). There is no specific burden on either party; rather, the trial court should weigh all evidence available. *Id.* at 354. In her appeal, respondent focuses unsuccessfully on unsupported allegations about the residential facility housing her child and irrelevant stories about children dying in protective services custody, citing *In re AMB*, 248 Mich App 144, 150-151; 640 NW2d 262 (2001), in which a baby was taken off life support without proper legal authority. Respondent cannot cite additional evidence on appeal. See *Kent County Aeronautics Bd v Dep't of State Police*, 239 Mich App 563, 580; 609 NW2d 593 (2000).

The strength of the bond between respondent and her child, the child's age, and the time he spent in respondent's care were relevant to the best interests decision. See *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004), and *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001). However, the evaluator opined that this relationship was emotionally unhealthy because the child was forced into a caregiver role, ensuring his mother took her medication and stayed away from drugs and bad influences. The evaluator opined further that, although the child would likely remain in a residential facility, he would gain some stability if respondent's rights were terminated. It was undisputed that termination would be painful for the child; however, this was outweighed by the risk of emotional and physical harm if the child were returned to respondent, who was likely to continue her pattern of mental stability and instability. The lower court did not err when it held that termination was not clearly against the child's best interests and terminated respondent's parental rights.

Affirmed.

/s/ Jessica R. Cooper
/s/ Mark J. Cavanagh
/s/ Patrick M. Meter